

TITLE 19 - DEPARTMENT OF AGRICULTURE, ADMINISTRATION DIVISION

Chapter 2 - FARM MEDIATION REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in administering the Farm Mediation Act, Neb. Rev. Stat. §§2-4801 to 2-4816.

002 Administration. The Farm Mediation Act and these regulations shall be administered by the Department of Agriculture, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is: P.O. Box 94947, Lincoln, Nebraska 68509-4947. The telephone number is: (402) 471-2341.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Farm Mediation Act shall apply to such terms when found in these regulations.

003.01 ACT shall mean the Farm Mediation Act.

003.02 ADMINISTRATOR shall mean the Nebraska Department of Agriculture.

003.03 PERSON shall mean bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and associations.

004 Financial Analysis.

004.01 The administrator shall contract with one or more persons to provide the borrower with an analysis of his or her business and personal financial situation as set out in the act.

004.02 Such financial analysis shall be available to any borrower requesting or consenting to mediation and shall be available at no cost to such borrower.

04.03 To be eligible to contract to provide financial analysis, a person shall be able to meet the requirements of the contract entered into between the administrator and such person. At a minimum, the contract shall provide that the person providing financial analysis shall be trained and experienced in agricultural financial analysis and have a basic understanding of production agriculture. The administrator shall retain the authority to review the qualifications and performance of any person providing financial analysis to borrowers.

005 Legal Assistance

005.01 The administrator shall provide any available information regarding legal assistance programs for borrowers.

005.02 The administrator may contract with one or more persons to provide legal assistance to borrowers involved in mediation.

005.03 To be eligible to contract to provide legal assistance, a person shall be able to meet the requirements of the contract entered into between the administrator and such person. At a minimum, the contract shall provide that the person providing legal assistance be qualified in agricultural credit problems of borrowers. The administrator shall retain the authority to review the qualifications and performance of any person providing legal assistance to borrowers.

006 Mediation.

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006.01 Mediation shall be available at any time to any borrower and all creditors of such borrower, whether secured or unsecured. No party is required to attend any mediation meeting. Failure to attend any mediation meeting or to participate in mediation shall not affect the rights of a borrower or creditor in any manner.

006.02 A request for mediation shall be submitted in writing on a form provided by the administrator. The request form shall be signed by the party requesting mediation and shall include a consent to mediate and the names, addresses, and telephone numbers of the parties who are being requested to mediate. The request may be made by either the borrower or a creditor.

006.03 Notice of the request for mediation shall be sent to all borrowers or creditors listed on the request and shall include a consent to mediate. The party requesting mediation shall be notified of the other parties' intention to participate in mediation.

006.04 If a consent to mediate is signed by the borrower and at least one creditor, a mediation meeting notice shall be sent within 20 calendar days after receiving a written mediation request to all the consenting parties setting a time and place for an initial mediation meeting between the borrower, the creditor or creditors, and a mediator. The notice shall also include the names of the mediator and all persons intending to be present at the meeting.

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006.05 All parties shall be advised of the importance of adequate preparation prior to the mediation meeting. The borrowers additionally shall be advised that assistance in the analysis of their business and personal financial situation is available at no cost to the borrower.

006.06 An initial mediation meeting shall be held within 20 calendar days of the issuance of the mediation meeting notice. Additional meetings shall be scheduled if a request is made by the parties. The mediation period shall extend for 60 calendar days after the receipt of the mediation request. If all parties consent, mediation may continue after the end of the mediation period.

006.07 All parties participating in mediation shall be present at the mediation meeting and have the authority to negotiate agreements with the other parties in mediation. If an agreement is reached between the borrower and the creditor or creditors, a draft encompassing the terms of the agreement shall be prepared. All parties shall sign the agreement and each shall receive a copy. All parties retain the right to have negotiated agreements reviewed and approved subsequent to the mediation meeting. No agreement shall become final until all parties have had the opportunity to have the agreement reviewed. The final agreement may be enforced as a legal contract between the parties.

006.08 Each party participating in mediation shall be charged not more than \$25 per hour for the actual time spent in mediation meetings. In cases of extreme financial hardship, such fee may be waived in whole or in part. The fee shall be collected by the farm mediation services to offset its costs in carrying out the terms of the contract entered into with the administrator.

006.09 Any party to mediation may request a substitution of the mediator. The request shall be made, in writing, to the administrator and shall specify the reason for the request. The administrator may order a substitution if it determines that a conflict of interest exists or that there are reasonable grounds to believe that a mediator cannot act fairly and impartially in the matter. The

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substitution shall be issued in writing and delivered to all parties participating in mediation.

006.10 All mediation meetings shall be confidential with only the mediator, the parties consenting to mediate, and their representatives or advisors present. Other persons may be present at such a meeting only upon the express consent of all participating parties. All persons present at the mediation meeting shall sign a statement agreeing to abide by the confidentiality requirements.

006.11 All data regarding the finances of borrowers and creditors, which is created, collected, and maintained, shall not be public records and shall be held in strict confidence by all parties in the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

007 Mediators.

007.01 The administrator shall require at least 30 hours of training on the mediation process, mediation skills, and agricultural farm finance. Upon approval by the administrator, past experience or training may be substituted for all or part of this requirement. Additional update training shall be required.

007.02 The mediator shall encourage and assist the parties reaching settlement. The mediator may not impose a settlement upon any party.

007.03 At the mediation meeting the mediator shall explain to the parties the process and goals of mediation, the rules of conduct for all persons at the mediation meeting, the fees involved, and that the mediator is neutral in the proceeding. The mediator shall inform the parties of any perceived or potential conflict of interest or bias he or she may have.

007.04 The administrator shall retain the authority to review the qualifications and performance of any mediator.

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007.05 No mediator acting under this act shall:

007.05A Provide legal or financial advice to the parties in mediation; except that a mediator may refer a party to alternative sources of professional consultation or assistance. A mediator may not solicit or accept any payment or thing of value, either directly or indirectly, in return for making a referral; or

007.05B Disclose any information or records obtained in connection with the mediation except upon written agreement with the parties.

007.06 The administrator shall maintain a list of all mediators under the Act.

008 Status of Contractors. Persons under contract to provide farm mediation services, financial analysis services, or legal services are not state agencies for any purpose by virtue of such contract, and their staff, employees, or contractors shall not be considered employees of the state for any such purpose.

009 Education. The administrator shall conduct a comprehensive education plan to promote and encourage the use of mediation. Such educational plan may include:

009.01 Working with borrowers and creditors to explain the advantages of mediation;

009.02 Preparing and disseminating information on mediation to all interested persons;

009.03 Developing articles and news releases on mediation for publication;

009.04 Coordinating activities with other local, state, and national entities, both public and private, on mediation;

009.05 Providing presentations and workshops on

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mediation; and

009.06 Performing any other activity which would promote the availability and use of mediation.

010 Statistical Data. The administrator shall maintain complete statistical records of program participation and cost. Such records shall be available upon request. At a minimum, such records shall include:

010.01 The total number of requests for mediation;

010.02 A breakdown of the number of requests made by borrowers and those made by creditors;

010.03 The number of cases agreeing to mediate;

010.04 The number of cases reaching a mediated agreement;

010.05 The number of cases reaching agreement outside of mediation;

010.06 The average length of the mediation session;

010.07 The average fee paid by each party; and

010.08 The location of the parties involved in mediation by crop reporting district.

011 Annotation. Neb. Rev. Stat. §§2-4801 to 2-4816 (Cum. Supp. 1988).